

IN THE HIGH COURT OF GUJARAT

AT AHMEDABAD

CRIMINAL APPEAL NO.782 OF 1994 .

AND

CRIMINAL APPEAL NO. 951 OF 1994

For approval and Signature:

THE HON'BLE MR.JUSTICE K.J.VAIDYA

And

THE HON'BLE MR. JUSTICE K.R.VYAS

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether Their Lordships wish to see the fair copy of judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge ?
- 1 to 5 No.

Vankar Harshadbhai Ratnabhai and ors.....Appellants

Versus

The State of Gujarat.....respondent

Mr. M.M.Tirmizi, Advocate for the accused.

Mr. S.A.Pandya, APP for the State.

CORAM;K.J.VAIDYA & K.R.VYAS,JJ.

October 1,1996

ORAL JUDGMENT :

PER; K.J.VAIDYA,J.

These two appeals, one by the State and the other by the convict accused, are directed against the common judgment and order of conviction and sentence dated 11-7-94 rendered in Sessions Case No. 166/93 by the learned Additional Sessions Judge, Mehsana, wherein Vankar Maganbhai and three others, came to be tried for the alleged offences punishable under sections 323, 324, 337 and 504 of the Indian Penal Code read with section 135 of the Bombay Police Act, 1951. At the end of the trial, Vankar Magan Ratna was found not guilty for the alleged offences with which he was charged and accordingly came to be acquitted. So far as the rest of the three accused persons were concerned, they were found guilty for the alleged offences and were sentenced as stated in detail in the impugned judgment and order.

2. According to the prosecution, the incident in question took place on 29-10-1990 at 7.30 p.m. in village Sipor near the house of the complainant Premabhai wherein Vankar Pravinbhai gave a pipe blow on his head while accused No.1 Magan Ratna gave a Dharia blow on the head of Daliben. It is further the case of the prosecution that at the aforesaid date, time and place Harshad Ratna and Haresh Ratna freely pelted stones causing injuries to the prosecution witnesses.

3. On the basis of these facts, Premabhai Sadabhai filed a complaint against accused for the alleged offences punishable under sections 323, 324, 337 and 504 of the Indian Penal Code. Wherein, at the end of the investigation, they accused came to be chargesheeted to stand trial before the Sessions Court at Mehsana. At trial, the accused pleaded not guilty and claimed to be tried. The trial Court, accepting and relying upon the prosecution evidence, acquitted Magan Ratna of all the charges levelled against him. However, so far as accused Nos. 2,3 and 4, who are the appellants in Criminal Appeal No. 782/94 were concerned, they were convicted and sentenced for the alleged offences as stated in detail in the impugned order giving rise to the present two appeals.

4. Heard Mr. Tirmizi and Mr. S.A. Pandya, learned Advocates appearing for the respective parties. No doubt, it is true, as it appears from the evidence of PW 1 Dr. Bhogilal Amthabhai that the complainant Prema Sada and his wife Dali

had received injuries during the incident that took place on 29th October, 1990 at 7.30 p.m. In this view of the matter, the presence of these two witnesses at the relevant time and place cannot be doubted. At the same time, it appears that a cross-complaint was filed against both these injured witnesses wherein they are accused for having committed murder of one Maniben and injuries to others. It also further appears that some sudden quarrel erupted between the parties. It also further appears, as admitted by the prosecution witnesses, that at the relevant time there was darkness, as there was no light. Not only that but, as admitted by the injured witnesses they had not seen any injury on the person of accused Magan Ratna. They have also gone to the extent of denying having seen any dead body of Maniben who died during the course of the same transaction. In this view of the matter, merely because injured witnesses have given evidence before the Court implicating four accused, that factor standing by itself is not sufficient to inspire the confidence of this Court regarding the manner and method in which the incident took place. Bearing in mind the factum of darkness, coupled with the fact that the injuries to the accused are not explained, we have our own serious doubt about the genesis of the prosecution case. Thus, when a matter is shrouded in darkness, it is, indeed, not possible for us to say with certainty that it was the accused and accused alone who committed a particular act in a particular manner. No doubt, the incident had taken place. No doubt, the prosecution witnesses were injured. But this does not carry the case any further because the medical evidence corroborates only the injuries. It does not and cannot take case any further to fix the identity of the accused. Thus, mere corroboration of the injuries by the medical evidence is not sufficient to fix up the liability of the accused. In this view of the matter, since we have reasonable doubt about the complicity of the accused about the crime alleged against them, the same is required to be resolved in favour of them by giving the benefit of doubt. Under the circumstances, we have in-deed no alternative left but to reverse the impugned judgment and order of conviction and sentence.

5. In the result, Criminal Appeal No. 782/94 filed by the appellant-accused is allowed. The impugned judgment and order of conviction and sentence is hereby quashed and set aside. Fine, if paid, shall be refunded to the accused. Bail bonds stand cancelled.

In view of the aforesaid discussion acquittal appeal has no merit. Accordingly, Criminal Appeal No. 951/94 of the State is dismissed.

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